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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF LOS ANGELES

11 UNLIMITED JURISDICTION

12
13 LOS ANGELES POLICE PROTECTIVE
LEAGUE

14 Petitioner,

15 v.

16
17 CITY OF LOS ANGELES, a municipal
corporation; MICHEL R. MOORE, Chief of
18 Police, City of Los Angeles, and DOES 1
through 20, inclusive,

19 Respondents.
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CASE NO. 18STCP03495

[ASSIGNED TO HON. JAMES C. CHALFANT, DEPT. 85]

**PETITIONER LOS ANGELES POLICE
PROTECTIVE LEAGUE'S REPLY TO
OPPOSITION OF CITY OF LOS ANGELES IN
SUPPORT OF ALTERNATIVE WRIT OF
MANDATE**

Complaint Filed: December 31, 2018
OSC re: Prelim. Inj: February 5, 2019

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1 **I. INTRODUCTION**

2 Petitioner Los Angeles Police Protective League (“League”) hereby submits its Reply Brief to
3 the Opposition filed by Respondents City of Los Angeles and Michel R. Moore, Chief of Police
4 (hereinafter together, the “City”).

5 It is undisputed that California Senate Bill 1421, enacted as Chapter 988 of the 2017-2018
6 Regular Session (“SB 1421”) will have a substantial impact on the preexisting privacy rights held by
7 police officers throughout the State of California. Whereas previously peace officer personnel records
8 could only be disclosed through the process outlined in Evidence Code Sections 1043 and 1045 and
9 initially set forth in *Pitchess v. Super. Ct.* (1974) 11 Cal.3d 531, now records relating to four categories
10 are not only disclosable but are public records. Even if the statute is applied only prospectively, it will
11 have a substantial impact on the opening of peace officer personnel records.

12 At issue in this litigation is whether SB 1421 should be applied retroactively, such that all peace
13 officer personnel records that meet the new criteria set forth in Penal Code Section 837, subdivision
14 (b)(1), regardless of when those records were created and regardless of when the underlying incidents
15 occurred, should have all prior protections removed. For the four categories of records identified in the
16 statute, this is a complete repudiation of the *Pitchess* process, which has governed the disclosure of
17 those peace officer personnel records for over forty years.

18 The City argues that the plain legislative language and intent establish that the statute must be
19 applied retroactively. Yet, throughout the City’s Opposition, it fails to provide any clear statement of
20 legislative intent, in either the statute itself or in the history. Indeed, there is no clear statement
21 evidencing such an intent: no statement that all records, regardless of when created, would be
22 disclosable; no finding that all records then in existence could be produced; no clear indication that for
23 the specified categories, the *Pitchess* process would no longer apply when litigants seek the disclosure
24 of old peace officer personnel records. There is simply no statutory language or legislative history cited
25 by the City that meets the requisite standard to apply such a statute retroactively: either express
26 language of retroactivity or clear and unavoidable evidence of such an intent. None is present here.

27 The City then argues that, regardless of any intent to apply the statute retroactively, SB 1421
28 does not act retroactively and that it is prospective only because it does not “change the legal effect of

1 past events.” (Opposition, 10:27-28.) In so arguing, however, the City entirely ignores the arguments
2 and evidence set forth by the League, which established that, prior to the enactment of SB 1421,
3 members of the League had an information privilege and privacy right in their records. The undisputed
4 evidence further shows that such officers took certain actions based on those rights. Now, however,
5 those rights have been eviscerated by legislative action. Retroactivity is not only found when the legal
6 effect of past events is changed; it is also found where legislation impacts *rights*. As stated by the
7 Supreme Court, “A retrospective law is one which affects rights, obligations, acts, transactions and
8 conditions which are performed or exist prior to the adoption of the statute.” (*Aetna Cas. & Sur. Co. v.*
9 *Industrial Acc. Commission* (1947) 30 Cal.2d 388, 391.) By removing the right to privacy in those
10 records and the informational privilege granted to officers therein, SB 1421 undoubtedly acts
11 retroactively, and such an application must be clearly set forth in the statute or legislative history. Here,
12 it is not, and therefore SB 1421 should apply prospectively only.

13 **II. STANDARD OF REVIEW**

14 The parties all agree about the proper standard of review which governs this Court’s analysis of
15 whether SB 1421 should be applied retroactively. As stated by the Court of Appeal, “a statute may be
16 applied retroactively only if it contains express language of retroactivity or if other sources provide a
17 clear and unavoidable implication that the Legislature intended retroactive application. [Citation.]”
18 (*Bullard v. California State Automobile Assn.* (2005) 129 Cal.App.4th 211, 217.) Moreover, “a statute
19 that is *ambiguous with respect to retroactive application is construed ... to be unambiguously*
20 *prospective.*” (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal. 4th 828, 841, emphasis added.)

21 Statutes are not to be given a retrospective operation unless it is clear that such was the
22 legislative intent. (*Aetna Cas. & Sur. Co., supra*, 30 Cal.2d at 393.) As later stated by the Supreme
23 Court: “[A] retrospective operation will not be given to a statute which interferes with antecedent rights
24 ... unless such be ‘*the unequivocal and inflexible import of the terms, and the manifest intention of the*
25 *legislature.*’” (*Myers, supra*, 28 Cal.4th at 840, emphasis added; see also *Evangelatos v. Superior*
26 *Court* (1988) 44 Cal.3d 1188, 1209 [“[I]n the absence of an express retroactivity provision, a statute
27 will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature []
28 must have intended a retroactive application”].)

1 **III. ARGUMENT**

2 **A. THERE IS NO CLEAR STATUTORY INDICATION THAT SB 1421 SHOULD**
3 **BE APPLIED RETROACTIVELY**

4 As established in the Ex Parte Application, the plain statutory language of SB 1421 does not
5 establish that the statute should be applied retroactively. Therefore, pursuant to the clear tenets of the
6 retroactive analysis, the Court must conclude that the statute should operate prospectively only.

7 “First, a court should examine the actual language of the statute” to determine if a retroactive
8 intent exists because “it is the language of the statute itself that has successfully braved the legislative
9 gauntlet.” (*Halbert’s Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238.) Legislative
10 interpretation begins by examination of the language of the statute, giving the words their ordinary
11 meaning and considering them in the context of the statutory framework. (*Barnes v. Dept. of*
12 *Corrections* (1999) 74 Cal.App.4th 126, 131.) As stated in the Application, “SB 1421’s terms contain
13 no express statement of retroactive application” and “no legislative findings directly a retroactive
14 application of the new law or asserting that SB 1421 is intended to ‘clarify’ the existing operation of
15 Penal Code section 832.7.” (Application, 7:18-8:1.)

16 The City’s Opposition does not cite to any clear statutory language that would indicate an intent
17 to apply SB 1421 retroactively. Instead, the City relies on the use of the word “maintained” in SB 1421
18 as evidence of clear legislative intent, as Section 832.7, subdivision (b) states: “Notwithstanding
19 subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the
20 following peace officer or custodial officer personnel records and records maintained by any state or
21 local agency shall not be confidential and shall be made available for public inspection pursuant to the
22 California Public Records Act....” However, the use of the word “maintained” here cannot represent
23 the clear legislative intent required to establish retroactive application because the statute does not
24 specify that all records *already* maintained are now subject to disclosure. For the same reason, the
25 definition of “maintain” provided in *Moghadam v. Regents of University of California* (2008) 169
26 Cal.App.4th 466, 480 adds no assistance because “maintain” by itself does not mean to preserve what
27 is already in existence as opposed to preserve certain records going forward. Instead, it is just as likely
28 that the statute mandates the disclosure of all records that the Department or agency maintains in the

1 due course of their statutory duties relating to conduct that has not yet occurred.

2 Indeed, the statute continues by listing the four categories of records now subject to disclosure.
3 However, none of these categories specified in Section 832.7, subdivision (b)(1) contain any indication
4 that past discharges of firearms or past severe uses of force would be subject to disclosure. Instead, the
5 statute itself is silent as to any retroactive application, and therefore the Court must find that SB 1421
6 acts prospectively only.

7 The authorities cited by the City to support its interpretation is readily distinguishable and does
8 not establish an intent to apply the statute retroactively, and none stand for the broad propositions
9 asserted by the City. For example, in *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, the
10 Court of Appeal did state that, “The CPRA generally presumes that all documents maintained by a
11 public entity are subject to disclosure to any member of the public, unless a statutory exemption applies
12 or the catchall exemption, section 6255, is satisfied.” (*Id.* at 223.) However, the precise issue to be
13 adjudicated in this case is whether the preexisting “statutory exemption” continues to apply or whether
14 SB 1421 has removed that exemption through its retroactive application. Moreover, *Fredricks* contains
15 no applicable holding regarding the temporal limit of the CPRA. Instead, as the decision itself makes
16 clear, the Court of Appeal in *Fredricks* was rejecting a prior decision of the Court of Appeal in *County*
17 *of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588 in which the Court of Appeal,
18 relying on an earlier version of the CPRA, had concluded that only contemporaneous records needed to
19 be disclosed. The Court of Appeal then declined to follow *Kusar*, however, because the statute “must
20 be read according to its plain terms, and these terms do not include an express time limitation” (*id.* at
21 218) because “[t]he main terms expressly relied upon by the court in *Kusar*... to support its
22 conclusions regarding an imposed time limitation upon disclosure obligations are no longer in the
23 statute.” (*Id.* at 232.) Finally, it must be noted that *Fredricks* did not analyze the statute through the
24 rubric of retroactivity. Accordingly, any statement in *Fredricks* relating to a lack of temporal language
25 in the CPRA must be construed in connection with its rejection of *Kusar*, and it cannot aid the City.

26 The City also relies on *Sander v. Superior Court* (2018) 26 Cal.App.5th 651 to support its
27 position that SB 1421 should be construed retroactively in order to be consistent with how the CPRA
28 operates, as the CPRA “requires public agencies to provide access to their *existing records*.”

(Opposition, 8:26-9:3.) However, *Sander* again did not concern whether provisions in the CPRA have retroactive effect. Instead, the issue was whether the agency had to create records in order to respond to the CPRA request. (*Id.* at 664.) The Court of Appeal upheld the trial court’s decision, reasoning that, “while the CPRA requires public agencies to provide access to their existing records, it does not require them to create new records to satisfy a request.” (*Id.* at 665.) Nothing in *Sander* therefore affects the analysis of whether SB 1421 should be applied retroactively because it does not contain any indication that all existing records previously designated as confidential, and therefore *exempt from disclosure*, should now be subject to such disclosure following SB 1421.

For the same reason, *Bd. of Pilot Commissioners v. Super Ct.* (2013) 218 Cal.App.4th 577, 597 is unhelpful; while the Court of Appeal did state that, “[t]he CPRA pertains to ‘disclosable public records in the *possession* of the agency’”, the issue here is whether previously confidential records should *now* be *disclosable* following the adoption of SB 1421.

Finally, the definition of a “public records” set forth in Government Code Section 6252, subdivision (e) is inapplicable for the simple reason that Penal Code Section 832.7 does not use the term “public record.”

Accordingly, there is no express language of retroactivity in SB 1421, and the Court should thus conclude that SB 1421 should be applied prospectively only.

**B. THE LEGISLATIVE HISTORY DOES NOT EVIDENCE A CLEAR INTENT
FOR THE RETROACTIVE APPLICATION OF SB 1421**

The City also argues that legislative history of SB 1421 establishes an intent to apply SB 1421 retroactively to already existing records. However, the City again has failed to provide sufficiently clear “text, history, and other extrinsic evidence” to establish a “manifest” intent for retroactive application. (See *Evangelatos, supra*, 44 Cal.3d at 1210; *Myers, supra*, 28 Cal.4th at 840.)

To support their contention, the City posits four separate arguments. First, the City argues that, “[h]ad the Legislature intended to shield from disclosure records pertaining to pre-enactment conduct, it could have included language in SB 1421 to create temporal limitations or otherwise distinguish between pre-enactment and post-enactment records.” (Opposition, 14:9-11.) However, this argument gets the test backward; in order for the statute to apply retroactively, the legislative history should have

1 provided a clear intent to do so. The failure to provide for only prospective application cannot be
2 evidence of an intent for retroactive application. Moreover, it would have been just as easy – if not
3 easier – to require the disclosure of all previously existing records or to provide that all records,
4 regardless of when created, are subject to disclosure. But the Legislature did not include such language.

5 Second, the City cites the Legislative history, which indicates that the Legislature was informed
6 of the requirement that law enforcement agencies keep records for five years and described the effect of
7 SB 1421, which “opens police officer personnel records in very limited cases.” (Opposition, 14:24-28;
8 see AR 15.) However, this language does not indicate a clear intent to open those records that were
9 *previously closed*, and nothing in the legislative history cited by the City so states. The reference to the
10 five-year period occurs during a restatement of the law, and nothing dictates that records kept during
11 the preceding five years would be opened. Instead, it is just as likely that the Senate report relating to
12 SB 1421 focused on the future effects of SB 1421 and its impact going forward, and specifically that
13 records which would have otherwise been kept confidential would now be opened, providing a
14 substantial benefit to the community.

15 Third, the City argues that the legislative history shows an intent to apply the law retroactively
16 because SB 1421 was not amended after a peace officer’s association stated that the law would have
17 retroactive effect. (Opposition, 15:8-18.) However, the City has cited no authority that permits an
18 inference of intent from a *failure to amend* legislation. Indeed, this evidence is the opposite of the clear
19 manifestations of intent necessary to establish retroactivity. It is just as likely the law was not amended
20 after April 2, 2018 because the legislators disagreed with the warnings of the peace officer association,
21 and there was thus no need to correct SB 1421 because it was intended to be prospective only.

22 Finally, the City argues that the purpose of SB 1421 suggests an intent to apply the statute
23 retroactively, as otherwise “no law enforcement agency in the state would currently have any records to
24 disclose”, which “appears at odds with the Legislature’s stated purpose in enacting SB 1421.”
25 (Opposition, 15:19-28.) However, if the result only *appears* to be at odds with the stated purpose of a
26 statute, then the intent is not sufficiently clear to apply the statute retroactively. In addition, the City’s
27 argument entirely ignores the benefits that will inure to the State simply through the prospective
28 operation of SB 1421, which will allow the State to meet all of its stated goals and intentions.

1 The City has cited no evidence that would establish the requisite clear intent needed to show
2 that the Legislature intended SB 1421 to apply retroactively. As the statutory language also does not
3 contain an express statement of retroactivity, the Court must determine as a matter of law that SB 1421
4 applies prospectively only. As stated by the Supreme Court, a statute that is “ambiguous with respect to
5 retroactive application is construed ... to be unambiguously prospective.” (*Myers, supra*, 28 Cal. 4th at
6 841.) As the evidence is at best ambiguous, SB 1421 is prospective only.

7 **C. SB 1421 WOULD CLEARLY HAVE A RETROACTIVE EFFECT**

8 The City next contends in its Opposition that the above analysis is irrelevant because SB 1421
9 does not have retroactive effect, even if its impact is to open to disclosure records that were previously
10 exempt from the CPRA and over which officers had an informational privilege. As the City states, “the
11 mere act of disclosing such records would not change the legal effects or attach new legal
12 consequences to officers’ past conduct,” and therefore the law is not retroactive. (Opposition, 11:15-
13 17.) However, the City’s argument ignores both the facts and the law.

14 First, the City has failed to rebut the evidence presented by the League through the Declaration
15 of Craig Lally. As Lally stated, “The existing right of privacy of LAPPL’s represented peace officers...
16 caused such members to make significant employment decisions in reliance on that confidentiality and
17 privacy.” (Decl. of Lally, ¶4.) Specifically, Lally declared:

18 The existence of such confidentiality of peace officer personnel records is often
19 a factor in the decision by officers to forgo their right to appeal accusations of
20 alleged misconduct or severity of discipline, and instead, reach a prompt
21 resolution with the LAPD in the furtherance of positive labor relations and in
22 preservation of resources; despite an officer’s underlying disagreement with the
23 propriety of such disciplinary action.

24 (*Id.*) This undisputed evidence thus establishes that the application of SB 1421 to pre-existing
25 personnel files would have a substantial retroactive impact, as it would attach a new legal consequence
26 to pre-enactment events. This practical and legal effect was ignored entirely by the City.

27 In addition, the City’s analysis of whether a statute has retroactive effect is too narrow. As
28 repeatedly stated by the Supreme Court, “A retrospective law is one which affects *rights*, obligations,
acts, transactions and conditions which are performed or exist prior to the adoption of the statute.”
(*Aetna Cas. & Sur. Co., supra*, 30 Cal.2d at 391; emphasis added.) “[I]t has long been established that

1 a statute *that interferes with antecedent rights* will not operate retroactively unless such retroactivity be
2 ‘the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.’”
3 (*McClung v. Employment Dev. Dept.* (2004) 34 Cal.4th 467, 475, quoting *United States v. Heth* (1806)
4 7 U.S. 399, 413; emphasis added.) The City’s analysis of whether SB 1421 would have retroactive
5 effect completely ignores the effect the statute would have on the pre-existing antecedent rights
6 afforded to the League’s members.

7 As the League established in its Application, officers have a significant privacy right in their
8 personnel records. This “confidentiality privilege” is possessed by both the officer and the agency, and
9 it prohibits public agencies from disclosing privileged information in response to a CPRA request.
10 (*City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1430.) Indeed, the Application cites
11 numerous cases clearly identifying this privacy right held by officers. (See Application, 4:7-15.)

12 The City, however, ignores all of this argument, instead asserting (incorrectly) that the League
13 assumed without analysis that the application of SB 1421 to pre-existing personnel records would have
14 retroactive effect. However, by identifying the clear right held by peace officers and setting forth how
15 that right was modified by SB 1421, the League plainly established the retroactive effect of applying
16 SB 1421 to preexisting records.

17 Accordingly, the City’s focus was too narrow when it states: “The fact that a post-enactment
18 CPRA request may seek records pertaining to pre-2019 conduct would not render the statute
19 retroactive, because disclosure of such records would not change the legal consequences of pre-
20 enactment incidents.” (Opposition, 13:15-18.) This analysis completely ignores the pre-existing
21 informational privacy right possessed by officers in their personnel files. Before, an officer would
22 accept a sustained finding of misconduct with the knowledge that such a finding was not subject to
23 disclosure, and that he held a privacy right in that information. Now, if the City’s position is adopted,
24 that privacy right previously held by the officer would be wiped away and the information would be
25 subject to disclosure. As the Supreme Court stated, “it is the law’s effect, not its form or label, which is
26 important.” (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 289.) The effect is plainly retroactive, and
27 nothing the City has cited requires the Court to rule that removing this previously-held privacy right
28 was prospective only.

1 **D. THE LEGISLATURE WAS NOT PERMITTED TO RETROACTIVELY**
2 **REMOVE THE PRIVACY INTERESTS HELD BY OFFICERS**

3 Finally, the City has argued that, even if SB 1421 applies retroactively and even if it effects the
4 prior privacy rights possessed by peace officers, SB 1421 should be permitted to have retroactive effect
5 because the Legislature has the authority to modify or rescind those privacy rights. However, the City's
6 argument is unsupported by the authority and fails to address the appropriate test to determine if a law
7 should be applied retroactively even though it would impair a vested right.

8 As noted above, in order for the City's argument to be considered, there must first be a
9 determination that the Legislature actually intended the statute to apply retroactively. As such, in both
10 cases cited by the City, the Courts of Appeal found that the Legislature had intended the relevant
11 statutes to apply retroactively. For example, in *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184
12 Cal.App.3d 997, the Court of Appeal stated, "Here, the Legislature **clearly stated** its intent that its 1981
13 amendment to section 3352... be retroactive." (*Id.* at 1007; emphasis added.) Similarly, in *Plotkin v.*
14 *Sajahtera, Inc.* (2003) 106 Cal.App.4th 953, the Court of Appeal found that, "Both the text... and the
15 legislative history of the Amended Ordinance **clearly indicate** the Beverly Hills City Council's intent
16 that the May 1, 2001 amendment apply to alleged violations... that had occurred prior to the
17 amendment's effective date." (*Id.* at 960; emphasis added.) Here, as noted above, there has been no
18 clear statement of legislative intent to apply SB 1421 retroactively, and accordingly whether the
19 privacy right previously enjoyed by the officers is subject to subsequent elimination is irrelevant.

20 Moreover, the privacy rights previously provided to officers should be considered vested, and
21 therefore subject to impairment in only limited circumstances. Unlike the rights at issue in *Plotkin* and
22 *Graczyk*, the right here is not purely statutory. Indeed, the right to privacy is enshrined in Article 1,
23 Section 1 of the California Constitution, which states: "All people are by nature free and independent
24 and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring,
25 possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." As
26 stated by the Supreme Court, "The Constitution... recognizes the right to privacy and specifically
27 acknowledges the statutory procedures that protect the privacy of peace officers." (*Commission on*
28 *Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 288.) The right to

1 privacy is not wholly dependent on statute, as more fully discussed in the League's Reply to the
2 Opposition of Intervenor. (See p. 12:2-13:12.) Accordingly, the right to privacy should be considered
3 as vested when assessing whether it may be impaired.

4 As such, the right can be only impaired if the retroactive application of the statute would not
5 violate due process, an analysis City entirely failed to undertake. As stated by the Court of Appeal:

6 Determining whether a particular retroactive provision violates due process by
7 impairing a vested right requires weighing several factors: “the significance of
8 the state interest served by the law, the importance of the retroactive application
9 of the law to the effectuation of that interest, the extent of reliance upon the
10 former law, the legitimacy of that reliance, the extent of actions taken on the
11 basis of that reliance, and the extent to which the retroactive application of the
12 new law would disrupt those actions.”

13 (*Plotkin, supra*, 106 Cal.App.4th at 963-64, quoting *In re Marriage of Buol* (1985) 39 Cal.3d 751,
14 761.) Here, the weighing of these factors supports not applying the statute retroactively. Although the
15 state interest in SB 1421 may be significant, the retroactive application of SB 1421 is not important to
16 the effectuation of that interest, as the prospective application of the statute will still have a substantial
17 effect in opening peace officer personnel records going forward, thereby ensuring further public
18 oversight of police departments. Moreover, as established in the Declaration of Lally, peace officers
19 have substantially relied on the former law, making career decisions based on the knowledge that their
20 personnel records would remain private. A retroactive application of SB 1421 would completely
21 disrupt the careers of numerous officers who relied on the prior privacy protections they enjoyed, and
22 therefore the weighing of the above factors supports applying SB 1421 prospectively only.

23 **V. CONCLUSION**

24 For the foregoing reasons, Plaintiff Los Angeles Police Protective League respectfully requests
25 the Court grant the Writ of Mandate and all other requested relief.

26 Dated: January 29, 2019

Respectfully submitted,

RAINS LUCIA STERN
ST. PHALLE & SILVER, P

/s/

By: Brian Ross
Attorneys for Petitioner, LOS ANGELES POLICE
PROTECTIVE LEAGUE

PROOF OF SERVICE

I am employed in the City of Santa Monica, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 1428 2nd Street, Suite 200, Santa Monica, CA 90401.

On the date below I served a true copy of the following document(s):

PETITIONER LOS ANGELES POLICE PROTECTIVE LEAGUE'S REPLY TO OPPOSITION OF CITY OF LOS ANGELES IN SUPPORT OF ALTERNATIVE WRIT OF MANDATE

on the interested parties to said action by the following means:

- ☒ **(BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- ☐ **(BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.
- ☐ **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by facsimile transmission from facsimile number (310) 393-1486 to the attorney(s) or party(ies) shown below.
- ☐ **(BY MESSENGER)** By placing a true copy of the above in a sealed envelope and by giving said envelope to an employee of First Legal for guaranteed, same-day delivery to the address(es) shown below.
- ☐ **(BY HAND DELIVERY)** By personal delivery of a true copy of the above to the attorneys or parties shown below
- ☒ **(BY E-MAIL or ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

DATED: January 29, 2019

/s/

Michele Hengesbach

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